

Amendment No. 2 to SB2120

Tracy
Signature of Sponsor

AMEND Senate Bill No. 2120*

House Bill No. 2186

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 31, by adding the following language as a new part:

4-31-__01. This part shall be known and may be cited as the "Tennessee Transportation State Infrastructure Fund Act."

4-31-__02. As used in this part, the term:

(1) "Department of transportation" means the Tennessee department of transportation and its successors;

(2) "Eligible costs" mean, as applied to a qualified project to be financed from the federal roadway account, the costs that are permitted under applicable federal laws, requirements, procedures, and guidelines in regard to establishing, operating, and providing assistance from the fund. As applied to a qualified project to be financed from the state and local roadway account, such costs include the costs of preliminary engineering, traffic and revenue studies, environmental studies, right of way acquisition, legal and financial services associated with the development of the qualified project, construction, construction management, facilities, and other costs necessary for the qualified project. As applied to any qualified project to be financed from the federal nonroadway account, such costs include the costs of preliminary engineering, traffic and revenue studies, environmental studies, right of way acquisition, legal and financial services associated with the development of the qualified project, construction, construction management, equipment, facilities, and other nonoperating costs necessary for the qualified project. As applied to any qualified

project to be financed from the state and local nonroadway account, such costs include the costs of preliminary engineering, traffic and revenue studies, environmental studies, right of way acquisition, legal and financial services associated with the development of the qualified project, construction, construction management, equipment, facilities, and other nonoperating costs necessary for the qualified project;

(3) "Eligible project" means a highway, including bridges; air transport and airport facilities; and rail, or transit or bicycle facility project which provides public benefits by either enhancing mobility and safety, promoting economic development, or increasing the quality of life and general welfare of the public. The term "eligible project" also includes port authorities. The term "eligible project" also includes mass transit systems including, but not limited to, monorail and monobeam mass transit systems. There may be included as part of any such project all improvements necessary to the full utilization thereof, including site preparation, roads and streets, sidewalks, water supply, outdoor lighting, belt line railroad sidings and lead tracks, bridges, causeways, terminals for railroad, automotive, and air transportation, transportation facilities incidental to the project, and the dredging and improving of harbors and waterways, none of which foregoing descriptive words shall be construed to constitute a limitation;

(4) "Federal accounts" mean, collectively, the separate account for federal roadway funds and federal nonroadway funds;

(5) "Financing agreement" means any agreement entered into between the authority and a qualified borrower pertaining to a loan or other financial assistance. Such agreement may contain, in addition to financial terms, provisions relating to the regulation and supervision of a qualified project, or other provisions as the authority may determine. The term "financing agreement" includes, without limitation, a loan agreement, trust indenture, security

agreement, reimbursement agreement, guarantee agreement, bond or note, ordinance or resolution, or similar instrument;

(6) "Fund" means the Tennessee transportation state infrastructure fund;

(7) "Government unit" or "local government" means a municipal corporation, county, community improvement district, or any public operator of transit, including combinations of two (2) or more of these entities, acting jointly to construct, own, or operate a qualified project, or any other state authority, board, commission, agency, or department which may construct, own, or operate a qualified project;

(8) "Loan" means an obligation subject to repayment which is provided by the fund to a qualified borrower for all or a part of the eligible costs of a qualified project. A loan may be disbursed in anticipation of reimbursement for or direct payment of the eligible costs of a qualified project;

(9) "Loan obligation" means a bond, note, or other evidence of an obligation issued by a qualified borrower;

(10) "Other financial assistance" includes, but shall not be limited to, grants, contributions, credit enhancement, capital or debt reserves for bonds or debt instrument financing, interest rate subsidies, provision of letters of credit and credit instruments, provision of bond or other debt financing instrument security, and other lawful forms of financing and methods of leveraging funds that are approved by the authority, and in the case of federal funds, as allowed by federal law;

(11) "Project revenues" or "revenues" mean all rates, rents, fees, assessments, charges, and other receipts derived or to be derived by a qualified borrower from a qualified project or made available from a special source, and, as provided in the applicable financing agreement, derived from any system of which the qualified project is a part or from any other revenue producing facility under the ownership or control of the qualified borrower including, without

limitation, proceeds of grants, gifts, appropriations and loans, including the proceeds of loans made by the fund, investment earnings, reserves for capital and current expenses, proceeds of insurance or condemnation and proceeds from the sale or other disposition of property and from any other special source as may be provided by the qualified borrower;

(12) "Qualified borrower" means any governmental unit authorized to construct, operate, or own a qualified project;

(13) "Qualified project" means an eligible project which has been selected by the authority to receive a loan or other financial assistance from the fund to defray an eligible cost; and

(14) "State and local accounts" mean, collectively, the separate account for state and local roadway funds and state and local nonroadway funds.

4-31-__03.

(a) The department of finance and administration shall establish the Tennessee transportation state infrastructure fund, in the state treasury, under the control of the authority. All federal funds shall be invested as required by applicable federal law. The state treasurer shall transfer all moneys from the existing fund for the Tennessee State Infrastructure Fund, administered by the department of transportation, on the effective date of this act to this fund established in this subsection.

(b) The following shall be established and credited to the Tennessee transportation state infrastructure fund as established in accordance with this section:

- (1) State and local roadway account;
- (2) State and local nonroadway account;
- (3) Federal roadway account; and
- (4) Federal nonroadway account.

4-31-__04.

(a) The following sources may be used to capitalize the fund and for the authority to carry out its purposes:

(1) Appropriations by the general assembly;

(2) Federal funds available to the state, as approved by the department of transportation;

(3) Contributions, donations, and deposits from government units, private entities, and any other source as may become available to the fund; and

(4) All moneys paid or credited to the fund, by contract or otherwise, payments of principal and interest on loans or other financial assistance made from the fund, and interest earnings which may accrue from the investment or reinvestment of the fund's moneys.

(b) Without limiting the provisions of subsection (a), it shall be specifically provided that any local government may use the proceeds of any local funds which may be hereafter made available by law for the purposes of this part, including without limitation the funding of eligible projects and contributions, donations, and deposits to the fund.

4-31-__05.

(a) Earnings on balances in the federal accounts shall be credited and invested according to federal law. Earnings on state and local accounts shall be credited to the state and local roadway account or state and local nonroadway account that generates the earnings. The authority may establish accounts and subaccounts within the state and local accounts and federal accounts as considered desirable to effectuate the purposes of this part, or to meet the requirements of any state or federal programs.

(b) For necessary and convenient administration of the fund, the authority shall establish federal and state and local accounts and subaccounts within the fund necessary to meet any applicable federal law requirements or as the fund

shall determine necessary or desirable in order to implement the provisions of this part.

(c) The authority shall comply with all applicable federal laws and regulations prohibiting the commingling of certain federal funds deposited in the fund.

4-31-__06.

(a) The commissioner of the department of transportation shall review a proposed project and shall determine if it is an eligible project and, if so, whether or not to recommend the project to the authority. Preference may be given to eligible projects which have local financial support.

(b) Upon recommendation by the department of transportation, and determination by the authority that the project is a qualified project, the authority has the power and is authorized to make loans and other financial assistance to a government unit to pay for all or part of the eligible costs of a qualified project. The term of the loan or other financial assistance shall not exceed the useful life of the project. The authority shall require the government unit to enter into a financing agreement in connection with its loan obligation or other financial assistance. The authority shall determine the form and content of loan applications, financing agreements, and loan obligations including the term and rate or rates of interest on a financing agreement. The terms and conditions of a loan or other financial assistance from federal accounts shall comply with applicable federal requirements.

(c) Any loan may be made from the proceeds of bonds or notes issued by the authority for the purpose of making such loans. Repayment of such loans shall be in such amounts as will be at least sufficient, together with other funds available therefor, to pay the principal of, and interest on, bonds and notes issued by the authority for the purpose of providing loans to local government for

the construction of qualified projects, and as may be necessary for the authority to maintain a reserve for debt service.

(d) The department of transportation shall review and approve any expenditures by the governmental unit to be funded under this part.

4-31-__07.

(a) Qualified borrowers are authorized to obtain loans or other financial assistance from the fund through financing agreements. Qualified borrowers entering into financing agreements and issuing loan obligations to the authority may perform any acts, take any action, adopt any proceedings, and make and carry out any contracts or agreements with the authority as may be agreed to by the authority and any qualified borrower for the carrying out of the purposes contemplated by this part.

(b) In addition to the authorizations contained in this part, all other statutes or provisions permitting government units to borrow money and issue obligations, including, but not limited to title 7, chapter 34, part 1, also known as the "Revenue Bond Law", and title 9, chapter 21, part 1, also known as the "Local Government Public Obligations Act of 1986", may be utilized by any government unit in obtaining a loan or other financial assistance from the authority to the extent determined necessary or useful by the government unit in connection with any financing agreement and the issuance, securing, or sale of loan obligations to the authority.

(c) A qualified borrower may receive, apply, pledge, assign, and grant security interests in project revenues to secure its obligations as provided in this part and may levy a tax of property sufficient to make such payments, which shall be in addition to all other taxes authorized or limited by law. A qualified borrower may fix, revise, charge, and collect fees, rates, rents, assessments, and other charges of general or special application for the operation or services of a qualified project, the system of which it is a part, and any other revenue

producing facilities from which the qualified borrower derives project revenues to meet its obligations under a financing agreement or to provide for the construction and improving of a qualified project.

(d) A qualified borrower shall ensure all funds loaned or otherwise received from the authority pursuant to this part are used in accordance with applicable federal law. Such qualified borrower shall be liable in the event of any misuse of such loan or other financial obligation received pursuant to this part.

4-31-__08.

(a) If a government unit fails to collect and remit in full all amounts due to the authority on the date such amounts are due under the terms of any note or other obligation of the government unit, the authority shall notify the appropriate state officials who shall withhold all or a portion of the funds of the state and all funds administered by the state and its agencies, boards, and instrumentalities allotted or appropriated to the government unit, including, but not limited to, state shared taxes and apply an amount necessary to the payment of the amount due.

(b) Nothing contained in this section mandates the withholding of funds allocated to a government unit which would violate contracts to which the state is a party, the requirements of federal law imposed on the state, or judgments of a court binding on the state.

4-31-__09. Following the close of each state fiscal year, the authority shall submit an annual report of its activities for the preceding year to the governor, the lieutenant governor, and the speaker of the house of representatives and make such report available to the general assembly. The authority also shall submit an annual report to the appropriate federal agency in accordance with requirements of any federal program.

4-31-__10. The authority, in consultation with the commissioner of transportation, is authorized to adopt policies and procedures to effectuate the purposes of this act.

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.